

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC YOUNG,

Plaintiff,

v.

CASE NO: 11-12780

CITY OF HIGHLAND PARK, et al.,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION IN LIMINE "TO
PRECLUDE ANY AND ALL EVIDENCE OF PLAINTIFF'S CURRENT
INCARCERATION WITH THE MICHIGAN DEPARTMENT OF CORRECTIONS"**

Plaintiff moves *in limine* [Dkt. #44] to "Preclude Any and All Evidence of Plaintiff's Current Incarceration with the Michigan Department of Corrections."

Plaintiff argues that "Plaintiff's criminal background will not aid the jury whatsoever in reaching a decision on the claims in this case. Furthermore, with respect to element number three . . . , the evidence at issue herein cannot and does not pass the balancing test set forth under FRE 403." (Dkt. # 44 at 2-3.)

Plaintiff imagines that the evidence would be proffered under Federal Rule of Evidence 404(b), but the court thinks it more likely that Defendants would be interested in impeaching credibility under Rule 609(a)(1), which is not subject to any balancing test as Plaintiff argues. See *Doe v. Sullivan County, Tenn.*, 956 F.2d 545, 551 (6th Cir. 1992) ("The Supreme Court has held that, in the civil context, Rule 609(a) requires that the trial court admit evidence of a witness's prior convictions regardless of the potential prejudice to either party.") (citing *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 525-26 (1989)). In the civil context, a court may not incorporate into Rule 609(a) the

general balancing test of Rule 403.

If Plaintiff is not a witness, a different analysis might apply.

The motion *in limine* [Dkt #44] is DENIED WITHOUT PREJUDICE.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 19, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 19, 2013, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522